

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KENNETH M. SUTTON,

Petitioner,

v.

JOHN GAY, *et al*,

Respondents.

Case No. C07-5148RBL-KLS

REPORT AND
RECOMMENDATION TO DENY
APPLICATION TO PROCEED
IN FORMA PAUPERIS

Noted for May 11, 2007

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Florence Correctional Center, located at Florence, Arizona. He has filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 and an application to proceed *in forma pauperis*. (Dkt. #1). Because petitioner appears to have sufficient funds with which to pay the \$5.00 Court filing fee, the undersigned recommends the Court deny the application.

DISCUSSION

The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the district court has broad discretion in denying an application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).

Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when a prisoner is able to pay the initial expenses required to commence a lawsuit. *See Temple v. Ellerthorpe*, 586

1 F.Supp. 848 (D.R.I. 1984); Braden v. Estelle, 428 F.Supp. 595 (S.D.Tex. 1977); U.S. ex rel. Irons v.
 2 Com. of Pa., 407 F.Supp. 746 (M.D.Pa. 1976); Shimabuku v. Britton, 357 F.Supp. 825 (D.Kan. 1973),
 3 *aff'd*, 503 F.2d 38 (10th Cir. 1974); Ward v. Werner, 61 F.R.D. 639 (M.D.Pa. 1974).

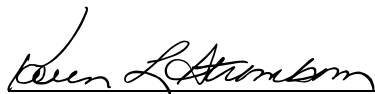
4 By requesting the Court to proceed *in forma pauperis*, petitioner is asking the government to incur
 5 the filing fee because he allegedly is unable to afford the costs necessary to proceed with his petition for
 6 *habeas corpus*. Plaintiff states in his application that he earns \$60.00 a month working as a laundry porter,
 7 resulting in a net monthly income of \$45.00. The prison trust account statement he submitted with his
 8 application indicates he receives somewhere in the range of \$62.00 and \$67.00 per month in earned wages.
 9 While the undersigned recognizes that the funds to which petitioner has access may not be great, given the
 10 fact that a prisoner's basic needs are provided for while incarcerated and the minimal filing fee required to
 11 proceed with this action (\$5.00), it is not unreasonable to expect petitioner to pay that fee from those
 12 funds.

13 CONCLUSION

14 Because it is reasonable to expect petitioner to incur the costs to proceed with his petition, the
 15 undersigned recommends that the Court deny his application to proceed *in forma pauperis*. Accordingly,
 16 the undersigned also recommends that the Court order petitioner to pay the required filing fee **within**
 17 **thirty (30) days** of the court's order.

18 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),
 19 the parties shall have ten (10) days from service of this Report and Recommendation to file written
 20 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
 21 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
 22 imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **May 11, 2007**,
 23 as noted in the caption.

24 Dated this 13th day of April, 2007.

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28 Karen L. Strombom
 United States Magistrate Judge